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October 9, 2015

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Mr. Daniel Martz  
Director of Special Education & Psychological Services  
Frederick County Public Schools  
191 South East Street  
Frederick, Maryland 21701

RE: XXXXX  
Reference: #16-018

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On August 26, 2015, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his daughter. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The FCPS has not ensured that the student has been provided with the accommodations required by the Individualized Education Program (IEP) since the start of the 2014-2015 school year,<sup>1</sup> in accordance with 34 CFR §§300.101 and .323.
2. The FCPS did not ensure that the IEP team considered the parent’s concerns raised at the IEP team meeting held on February 23, 2015, in accordance with 34 CFR §300.324.

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<sup>1</sup> The 2014-2015 school year references while in attendance at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX..

3. The FCPS did not provide an IEP within five (5) business days of the February 23, 2015 IEP team meeting, in accordance with COMAR 13A.05.01.07.

**INVESTIGATIVE PROCEDURES:**

1. On August 31, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mr. Daniel Martz, Director of Special Education & Psychological Services, FCPS.
2. On September 2, 2015, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant about the allegations. On the same date, the complainant provided the MSDE with documentation to be considered.
3. On September 8, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mr. Martz of the allegations to be investigated and requested that his office review the alleged violations.
4. On September 11, 2015, Mr. Chichester visited the XXXXXXXXXXXXXXXXXXXX (XXXX) to review the student's educational record.
5. On September 22, 2015, Mr. Chichester and Ms. Anita Mandis, Compliant Investigation Section Chief, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX XXXXX (XXXXXX) and interviewed the following FCPS staff:
  - a. Ms. XXXXXXXXXXXX, Principal;
  - b. Ms. XXXXXXXXXXXX, Speech and Language Pathologist;
  - c. Ms. XXXXXXXX, Instruction Coordinator;
  - d. Ms. XXXXXXXXXXXX, Supervisor of Child Find and Speech and Language Pathologist; and
  - e. Ms. XXXXXXXX, Math Teacher.

Ms. Linda Chambers, Supervisor of Special Education Instruction and Compliance, FCPS, attended the site visit as a representative of the FCPS and to provide information on the school system's policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated November 11, 2013;
  - b. IEP, dated October 27, 2014;
  - c. IEP Amendments, dated December 8, 2014 and February 23, 2015;
  - d. IEP Team Meeting Notes, dated October 27, 2014, December 8, 2014, and February 23, 2015;

- e. IEP Prior Written Notices dated October 27, 2014, December 8, 2014, and February 23, 2015;
- f. Notice of Documentation for Review at an IEP Meeting on October 27, 2014, February 11, 2015, and February 12, 2015;
- g. Electronic mail (email) messages among the complainant and the school staff, dated between September 22, 2014 and March 17, 2015;
- h. Emails among the student's teachers, dated between September 25, 2014 and February 10, 2015;
- i. *Sample IEP Goals and Objectives* submitted by the parent to school staff with written notes by the Instructional Coordinator;
- j. List of considerations for an upcoming IEP meeting from the complainant to the Speech and Language Pathologist (SLP);
- k. Occupational Therapist's (OT) Monthly Contact Sheet, dated between September 8, 2015 and October 31, 2014;
- l. XXXXXX Report Card (Grade 7) for the 2014-2015 school year, and
- m. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on August 26, 2015.

### **BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with Autism under the IDEA. She has an IEP that requires the provision of special education instruction and related services. The student attended the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX), a Frederick County Public Charter School from the start of the 2014-2015 school year until April 7, 2015, when she transferred to XXXXXXXXXXXXX School, at the complainant's request (Docs. a - c).

### **ALLEGATION #1: PROVISION OF ACCOMMODATIONS**

### **FINDINGS OF FACTS:**

- 1. The IEP, which was in effect at the start of the 2014-2015 school year, stated that the student will be "allowed use of a slant board and graphic organizers for all writing assignments and all written assessments." The IEP also stated that the student "needs increased time to complete assignments and taking timed tests" (Docs. a and b).
- 2. On October 9, 2014, an email message between the student's teachers and service providers, documents that the student chooses to use a binder instead of the slant board for positioning her paper when writing, although the slant board is in the classroom (Doc. h).
- 3. The student's occupational therapist (OT) service provider documented in service logs that when the student uses her binder, it provides her with adequate positioning and visual support for handwriting (Doc. k).

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4. The correspondence among the teachers, service providers, and the complainant, between October 2014 and November 2014, reflect that the complainant was informed that the student had chosen to use the binder instead of her slant board, and that her writing skills were being monitored (Doc. g).
5. On December 8, 2014, the team met and revised the IEP to provide clarification of the required accommodations to address concerns raised by the complainant about whether accommodations were being provided as required, including the slant board. The revised IEP stated that the student may “use a slant board as needed and per choice when she is completing class work”, and that “the use of graphic organizers will be provided, as needed”, to help organize thoughts and ideas. The IEP also stated that the student receives “extended time (time and a half)” to complete assignments and take timed tests (Docs. c and m).
6. On February 23, 2015, the IEP team met again to address the complainant’s continuing concerns about the student’s use of the slant board. The team discussed that there were no differences in the student’s work using a slant board or binder (Docs. d, l, and m).
7. On February 19, 2015, the complainant requested that the student be provided with extended time and a graphic organizer in order to complete a Language Arts project. In response, the student’s teacher agreed to extend the due date of the assignment. The teacher also provided a written checklist for the project, informing the complainant that a graphic organizer was not available for this project (Doc. g).
8. The student was able to successfully complete the project without the provision of the graphic organizer (Doc. l).

#### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that special education services, accommodations, and supplementary aids and services, are provided in accordance with each student’s IEP (34 CFR §§300.101 and .323).

#### **Slant Board**

Based on the Findings of Facts #1 - #8, the MSDE finds that the IEP does not require that the student use a slant board for completing all writing assignments and all written assessments. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

### **Graphic Organizer and Provision of Extended Time**

The complainant asserts that, in February 2015, the Language Arts teacher did not provide the student with a graphic organizer or extended time to complete a project, upon his request. Based on the Finding of Fact #7, the MSDE finds that there is documentation that the student was not provided with a graphic organizer needed for a project, as required by the IEP. Based on that Finding of Fact, this office finds that, while the Language Arts teacher provided a written checklist to assist the student with processing, sequencing, and memory, the accommodation was not in the format of a graphic organizer, as required by the IEP. Therefore, the MSDE finds that a violation has occurred with respect to this aspect of the allegation.

Notwithstanding this violation, based on the Fact of Finding #8, the MSDE finds that the lack of the provision of the graphic organizer did not have a negative impact on the student. Therefore, no student-specific corrective action is required.

Based on the Finding of Fact # 7, the MSDE further finds that there is documentation that the student was provided with the accommodation of extended time to complete her assignment, as required by the IEP. Therefore, the MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

### **ALLEGATION #2: CONSIDERATION OF THE COMPLAINANT'S CONCERNS AT THE FEBRUARY 23, 2015 IEP TEAM MEETING**

#### **FINDINGS OF FACTS:**

9. On December 2, 2014, the complainant submitted to the school staff, a list of items he wished to have considered at the December 8, 2014 IEP meeting (Doc. i).
10. At the December 8, 2014 IEP meeting, the complainant provided the IEP team with the *Sample IEP Goals and Objectives* he wished to have considered. The meeting notes document the IEP team's discussion of the concerns outlined in the list of considerations submitted by the complainant on December 2, 2014. However, the team did not complete the IEP review at that meeting and recommended additional data be obtained before doing so (Docs. d and i).
11. On February 23, 2015, the IEP team reconvened. At the meeting, the complainant raised concerns about the lack of implementation of *Sample IEP Goals and Objectives*, and re-submitted them to the IEP team. The meeting notes reflect that the Instructional Coordinator explained that the goals and objectives were similar to social and language pragmatic goals that the team reviewed and approved at this meeting (Docs. d, e, and m).

12. On March 13, 2015, an email was sent to the complainant by the school staff offering to convene another IEP meeting to further discuss the *Sample IEP Goals and Objectives* recommended by the complainant (Doc. g).
13. On March 16, 2015, the complainant responded by email to school staff and declined their offer to reconvene the IEP team (Doc. g).

### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

In this case, the complainant alleges that, because the IEP team did not adopt the *Sample IEP Goals and Objectives* he submitted on December 8, 2014 and February 23, 2015, his input was not considered when developing the IEP.

Based on the Findings of Facts #9 - #13, the MSDE finds that there is documentation that the IEP team considered the goals requested by the complainant, and that the documentation does not support the allegation that the IEP team did not consider the complainant's concerns for enhancing the education of the student. Therefore, the MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

### **ALLEGATION #3: PROVISION OF DOCUMENTS**

#### **FINDINGS OF FACTS:**

14. On October 20, 2014, the school staff emailed the complainant documents to be considered at the October 27, 2014 IEP team meeting (Doc. f).
15. On October 31, 2014, the school staff emailed the complainant an IEP following the October 27, 2014 team meeting (Doc. g).
16. On December 1, 2014, the school staff emailed the complainant documents to be considered at the December 8, 2014 IEP meeting (Doc. f).
17. On December 15, 2014, the school staff emailed the complainant an IEP following the December 8, 2014 team meeting (Doc. g).

18. On February 11 and 12, 2015, the school staff emailed the complainant documents to be considered at the February 23, 2015 IEP team meeting (Doc. f).
19. On March 18, 2015, the school staff emailed the complainant an IEP following the February 23, 2015 team meeting (Doc. g).

### **DISCUSSION/CONCLUSIONS:**

The public agency must provide parents with a copy of each assessment, report, data chart, draft IEP, or other documents that the IEP team plans to discuss at the meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07D). As explained in the MSDE Technical Assistance Bulletin #20 – *Child with a Disability – Individualized Education Program Meeting – Document Access* (September 2012), if the purpose of the IEP team meeting is to determine whether or not the student is a student with a disability and/or to determine the special education, related services, supplementary aids, services, program modifications, and supports a student may need, the IDEA or the COMAR neither requires or prohibits the public agency personnel to draft a proposal for discussion by the IEP team prior to the scheduled meeting.

No later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, school personnel shall provide the parents with the draft copy of the IEP (Md. Code Ann., Educ., §8-405(e)(1)(2)).

The failure of school personnel to comply with the timelines and actions listed above for providing copies of reports in advance of a meeting or copies of a child's completed IEP following the IEP team meeting does not constitute a substantive violation of the requirement to provide a FAPE (Md. Code Ann., Educ., §8-405)(g)).

Based on the Findings of Facts #14, #16, and #18, the MSDE finds that there is documentation that the complainant was provided with documentation considered by the IEP team at least five (5) business days prior to each meeting. Therefore, the MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

Further, based on the Findings of Facts #15, #17, and #19, the MSDE finds that while the complainant was provided an IEP five (5) days after the October 27 and December 8, 2014 meetings, the complainant was not provided an IEP five (5) days after the February 23, 2015 IEP meeting. Therefore, the MSDE finds that a violation has occurred with respect to this aspect of the allegation.

However, because a violation of this requirement does not result in a loss of a FAPE to a student, no student-specific corrective action is required to remediate the violation.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the FCPS to provide documentation by the end of the 2015-2016 school year, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of noncompliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770. Please be advised that both the complainant and the FCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, or placement for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:ac

c: Theresa R. Alban  
Linda Chambers  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
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